

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AMERICAN CRUISE LINES, INC.,)
)
)
Plaintiff,)
)
)
v.) C.A. No. 13-324 (RGA)
)
HMS AMERICAN QUEEN STEAMBOAT) Redacted Public
COMPANY LLC, and AMERICAN QUEEN) Version
STEAMBOAT OPERATING COMPANY,)
LLC,)
)
Defendants.)

**DECLARATION OF CHARLES A. ROBERTSON
IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

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December 20, 2016

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DECLARATION OF CHARLES A. ROBERTSON
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I, Charles A. Robertson, being over the age of eighteen (18) and competent to testify to the matters herein, state as follows:

1. I am the President and Chief Executive Officer of American Cruise Lines, Inc., the Plaintiff in this action. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Except to the extent my knowledge is based on regular course of business records kept at our corporate headquarters in Connecticut, I have personal knowledge of the matters set forth in this Declaration and I am competent to testify regarding these matters. Unless otherwise noted, all of the documents attached as Exhibits to this Declaration (sometime referred to as "CAR Dec Ex") are true and accurate copies of records kept in the ordinary course of business of American Cruise Lines.

2.

[REDACTED]

[REDACTED]

[REDACTED]

3.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4.

[REDACTED]

[REDACTED]

[REDACTED]

5.

[REDACTED]

6. [REDACTED]

[REDACTED]

[REDACTED]

7. American Cruise Lines is a national company that began marketing its services nationally in 1999 with its distinctive AMERICAN CRUISE LINES trademarks and has been consistently promoting its brand under those marks nationally and internationally for 17 years. Our market penetration is notable; we have attracted passengers to our ships from every state in the nation as well as from many foreign countries.

8. Since American Cruise Lines first began marketing its services in 1999, American Cruise Lines has consistently promoted its services on a national basis using the first word “American” as the key descriptor in its name. The first word of our corporate brand name “American Cruise Lines” is important to differentiate our brand name from other brand names.

9. American Cruise Lines’ trademarked logo emphasizes the word “American:”



. This is the form of our logo we use consistently in our advertising, emphasizing the word “American” by using a larger font and a different color from the words “cruise lines” and emphasizing our patriotic theme with the colors red, white, and blue. [REDACTED]

[REDACTED]

10. Corporate branding identifies the organization as the provider of the product or service offered. In the overnight passenger cruise industry, the service offered is cruise ship services, including arranging and providing riverboat tours with onboard services such as dining, stateroom accommodations, and entertainment, and on shore services, such as hotel accommodations, shore side excursions and travel insurance. The services offered by overnight

passenger cruise ship lines such as American include much more than simply transporting passengers from place to place.

11. In the cruise industry, ships operated under a single brand name are often named to incorporate all, or part, of the company brand name to reinforce and tie the ship to the operator's overall brand. It is also not uncommon for different brands to use some parts of a ship name also used by another brand. For instance, Carnival Cruise Line has vessels named *Carnival Dream*, *Carnival Magic*, and *Carnival Fantasy* and Disney Cruise Line has vessels named *Disney Dream*, *Disney Magic* and *Disney Fantasy*. Differentiation is created by incorporating the first word of the brand into the name of the ship.

12. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13. All vessels that American Cruise Lines has placed in service since 2000, other than one it purchased and one referring to the river system where it operates, are named under its "American" patriotic theme, most of them incorporating the term "American" in their name, [REDACTED]

[REDACTED]

[REDACTED]

14.

15. American initially offered cruises in 2000 aboard its first ship, *American Eagle*, along the coast and islands of New England, the Chesapeake Bay, Hudson River, the Intracoastal Waterway from South Carolina to Florida, and the Okeechobee Waterway in Florida. (CBR Dec Ex 6 [ACL 1067-1086]). In 2001 American Cruise Lines expanded itineraries to include cruises along the St. John's River in Florida and other Southern waterway cruises. (CBR Dec Ex 7. [ACL 1123-1150]). In 2002 American began sailing its second ship, the *American Glory*, and expanded itineraries north to include Maine coasts and harbors, began offering a Long Island Sound cruise, and expanded cruise offerings along the Chesapeake Bay. (CBR Dec Ex. 8-9 [ACL 1123-1150, ACL 48920-48951]). In 2005 American began to operate its third ship, the *American Spirit*, and added capacity and itineraries along the East Coast, rivers, and other waterways. (CBR Dec Ex 10

[ACL 49308-49339]). American Cruise Lines has continued to grow and expand its fleet of ships and itineraries to include the Snake and Columbia Rivers in the Pacific Northwest, Alaska's Inland Passage, and the Mississippi River.

16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19. [REDACTED]

[REDACTED]

[REDACTED]

20. American Cruise Lines has been the topic of numerous unsolicited articles in national publications including *Travel Agent*, *The New York Times*, *The Los Angeles Times*, *Cruise Travel*, *Cruise Agent*, and others. The company has also received numerous industry awards including: World Travel Awards winner of the North America's Leading River Cruise Company 2016, World's Leading River Cruise Company 2015, World's Leading Small Ships Cruise Line 2015, North America's Leading River Cruise Company 2015, World's Leading River Cruise Company 2014, World's Leading Small Ships Cruise Line 2014, North America's Leading River Cruise Company 2014, World's Leading River Cruise Company 2013, World's Leading Small Ships Cruise Line 2013, North America's Leading River Cruise Company 2013, World's Leading Small Ships Cruise Line 2012, Best Paddlewheel River Cruise in Washington 2013, Travel Age West's "Best New Ship".

21. [REDACTED]

[REDACTED]

[REDACTED]

22. Exhibit 1, is a copy of the Articles of Incorporation for American – Eastern Cruise Lines, Inc. (Old ACL) dated June 13, 1973.

23. Exhibit 2, is a copy of the Articles of Amendment to change the name from American - Eastern Cruise Lines, Inc. to American Cruise Lines, Inc. dated October 9, 1974.

24. Exhibit 3, ACL 17495, is a copy of an advertisement of Old ACL published in *Yankee Magazine* in 1975.

25. Exhibit 4, ACL 17535, is a copy of advertisements of Old ACL published in *Southern Living Magazine* in 1975.

26. Exhibit 5, ACL 17484, is a copy of an advertisement of Old ACL entitled “Harbor Hopping Cruises” published in 1983.

27. Exhibit 6, ACL 17556, is a copy of a listing for Old ACL published in Official Steamship Guide International – August 1984, listing Old ACL’s vessel cruise itineraries, including 10-Day and 7-Day Mississippi River cruises.

28. Exhibit 7, ACL 17453, is a copy of a listing for Old ACL published in Official Steamship Guide International – December 1984 listing Old ACL’s vessel cruise itineraries, including 10-Day and 7-Day Mississippi River cruises.

29. Exhibit 8, ACL 17450, is a copy of a listing for Old ACL published in Official Steamship Guide International – January 1985 listing Old ACL’s vessel cruise itineraries, including more than a dozen different multi-day Mississippi River or Upper Mississippi River cruises.

30. Exhibit 9, ACL 17455, is a copy of an advertisement of Old ACL published in *Travel Agent Magazine* in March, 1985.

31. Exhibit 10, ACL 17506, is a copy of an advertisement of Old ACL published in 1986 for Old ACL’s Mississippi River cruises.

32. Exhibit 11, ACL 17508, is a copy of an advertisement of Old ACL published in *Cruise the Carolinas* in 1986.

33. The operations of Old ACL out of New Orleans attracted news coverage. Exhibit 12, ACL 48625, is a true and accurate copy of a newspaper article about American sailing out of New Orleans published October 2, 1983 in *The Times-Picayune* entitled “Line plans ’84 series of

cruises out of N.O. with its Independence.” Exhibit 13, ACL 48613, is a true and accurate copy of a newspaper article about American’s putting a new riverboat, the *New Orleans*, into service on the Mississippi River published February 23, 1986 in *The Times-Picayune* entitled “Set sail along the Mississippi.”

34. Exhibit 14, ACL 48890-48895, is a copy the Certificate of Incorporation for American Lines, Ltd. dated May 10, 1991.

35. Exhibit 15, ACL 48906-48919, is a copy of the Certificate of Amendment for American Lines, Ltd, changing its name to American Cruise Lines, Inc. dated February 18, 1999.

36. [REDACTED]

[REDACTED]

37. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

38. [REDACTED]

[REDACTED]

[REDACTED]

39. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

40. [REDACTED]

[REDACTED]

[REDACTED]

41. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

42. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

43. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

44. Prior to AQSC's adoption of the name "American Queen Steamboat Company" in 2012, no such brand existed. No prior owner of the vessel *American Queen* incorporated the vessel name in its brand name.

SIGNATURE PAGE TO FOLLOW

Pursuant to 28 U.S.C. § 1746, I declare under the penalties of perjury that the foregoing is true and correct.

Executed in Maryland, this 20 day of December, 2016.



Charles A. Robertson